

Kathleen Sullivan (SBN 242261)  
kathleensullivan@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

Sean S. Pak (SBN 219032)  
seanpak@quinnemanuel.com  
John M. Neukom (SBN 275887)  
johnneukom@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

David Nelson (*admitted pro hac vice*)  
davenelson@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
500 W Madison St, Suite 2450  
Chicago, IL 60661  
Telephone: (312) 705-7465  
Facsimile: (312) 705 7401

[Additional counsel listed on signature page]

ATTORNEYS FOR PLAINTIFF CISCO  
SYSTEMS, INC.

Robert A. Van Nest (SBN 84065)  
rvannest@kvn.com  
Brian L. Ferrall (SBN 160847)  
bferrall@kvn.com  
David Silbert (SBN 173128)  
dsilbert@kvn.com  
MICHAEL S. KWUN (SBN 198945)  
mkwun@kvn.com  
KEKER & VAN NEST LLP  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: (415) 391-5400  
Facsimile: (415) 397-7188

ATTORNEYS FOR DEFENDANT ARISTA  
NETWORKS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE

CISCO SYSTEMS, INC.,

Plaintiff,

v.

ARISTA NETWORKS, INC.,

Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**PARTIES' UNDISPUTED STATEMENT  
OF THE CASE; JURY INSTRUCTION  
NO. 2**

Dept.: Courtroom 3 – 5th Floor  
Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

1 Plaintiff Cisco Systems, Inc. and Defendant Arista Networks, Inc. hereby provide the  
 2 following undisputed: (1) Neutral Statement of the Case, to be read in advance of the Juror  
 3 Questionnaire; and (2) Preliminary Jury Instruction No. 2 re Claims and Defenses:

4 **STIPULATED: Neutral Statement of the Case**

5 The plaintiff in this case is Cisco Systems, Inc. The defendant is Arista Networks, Inc.

6 This is a case involving claims of copyright and patent infringement. Cisco and Arista  
 7 sell networking switches. Cisco asserts that Arista infringed Cisco's copyrights. Arista asserts  
 8 that it did not infringe any of Cisco's copyrights, and various other defenses. Cisco also asserts  
 9 that Arista has infringed one of Cisco's patents. Arista denies that it has infringed the patent.

10 **STIPULATED: Preliminary Instruction No. 2 re Claims And Defenses**

11 To help you follow the evidence, I will give you a brief summary of the positions of the  
 12 parties:

13 The plaintiff in this case is Cisco Systems, Inc., which I will refer to as "Cisco," and the  
 14 defendant is Arista Networks, Inc., which I will refer to as "Arista." This is a case involving  
 15 claims of copyright and patent infringement. Cisco and Arista sell networking switches.

16 Cisco asserts that Arista infringed Cisco's copyrights by copying certain elements of  
 17 Cisco's user interface and copying certain portions of Cisco's product manuals. [Cisco also  
 18 asserts that Arista infringed its copyrights willfully.] Cisco has the burden of proving its claim of  
 19 copyright infringement [and its claim of willfulness]. Arista contends that it does not infringe any  
 20 of Cisco's copyrights [and that the asserted elements of Cisco's works are not protected by  
 21 copyright because of the merger and scènes à faire doctrines {should the Court determine these  
 22 are not affirmative defenses}]. Arista also asserts as affirmative defenses that any use of the  
 23 accused elements is a "fair use" under the law, [that the asserted elements of Cisco's works are  
 24 not protected by copyright because of the merger and scènes à faire doctrines {should the Court  
 25 determine these are affirmative defenses }], and that Cisco has [misused its copyrights,]  
 26 abandoned its copyrights[, and waived its rights to enforce the copyrights at issue]. Arista has the  
 27 burden of proof on these affirmative defenses.

28 ///

1 Cisco also asserts that Arista has infringed United States Patent No. 7,047,526, which I  
2 and the parties will refer to as the “‘526 Patent.” [Cisco also asserts that Arista infringed the ‘526  
3 Patent willfully.] Cisco has the burden of proving its claim of patent infringement [and its claim  
4 of willfulness]. Arista denies that it has infringed the ‘526 Patent.

5  
6 DATED: November 14, 2016

Respectfully submitted,

7  
8 /s/ John M. Neukom

Kathleen Sullivan (SBN 242261)  
kathleensullivan@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

13 Sean S. Pak (SBN 219032)  
seanpak@quinnemanuel.com  
John M. Neukom (SBN 275887)  
johnneukom@quinnemanuel.com.  
Matthew D. Cannon (SBN 252666)  
matthewcannon@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

19 David Nelson (admitted pro hac vice)  
davenelson@quinnemanuel.com  
QUINN EMANUEL URQUHART &  
SULLIVAN LLP  
500 W. Madison St., Ste. 2450  
Chicago, IL 60661  
Telephone: (312) 705-7465  
Facsimile: (312) 705-7401

24 Steven Cherny (admission pro hac vice  
pending)  
steven.cherny@kirkland.com  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Adam R. Alper (SBN 196834)  
adam.alper@kirkland.com  
KIRKLAND & ELLIS LLP  
555 California Street  
San Francisco, California 94104  
Telephone: (415) 439-1400  
Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)  
michael.devries@kirkland.com  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500

Attorneys for Plaintiff Cisco Systems, Inc.

Dated: November 14, 2016

KEKER & VAN NEST LLP

By: /s/ Brian L. Ferrall

Robert A. Van Nest - # 84065  
rvannest@kvn.com  
Brian L. Ferrall - # 160847  
bferrall@kvn.com  
David Silbert - # 173128  
dsilbert@kvn.com  
Michael S. Kwun - # 198945  
mkwun@kvn.com  
Keker & Van Nest LLP  
633 Battery Street  
San Francisco, CA 94111-1809  
Telephone: 415 391 5400  
Facsimile: 415 397 7188

Attorneys for Defendant Arista Networks, Inc.

**ATTORNEY ATTESTATION**

I hereby attest, pursuant to Local Rule 5-1(i)(3), that the concurrence in the filing of this document has been obtained from the signatory indicated by the “conformed” signature (/s/) of John M. Neukom within this e-filed document.

/s/ Brian L. Ferrall  
BRIAN L. FERRALL